appellant to show that what the respondents maintained was untrue. The respondents at the same time stated that the appellant was not entitled to look behind the Hire Purchase Agreement unless he could prove by evidence that it was not a Hire Purchase Agreement, which he had failed to do.

The respondents further maintained, when asked by the Court, that clause 5(b) of the Agreement meant that if Madam Tan Geok Khim, the Hirer, permitted the vehicle to be used and it was then used in contravention of any Statute, etc. she had committed a breach of that clause and accordingly clause 6 was applicable.

The operative words in clause 5(b) of the Hire Purchase Agreement are: "The Hirer during the hiring . . . . will not during the hiring use or permit to be used the vehicle in contravention of any Statute, Ordinance, Enactment or regulation for the time being in force or in any manner by reason of which the vehicle may become liable to seizure confiscation or forfeiture or otherwise in any way contrary to law".

The operative part of clause 6 of the Agreement reads: "if the Hirer . . . . shall not duly observe and perform the several provisions of this Agreement, then in any such case it shall be lawful at any time or times thereafter (subject to any Statutory restrictions to the contrary) for the Owners forthwith to terminate the hiring and/or the Agreement, and to seize the Vehicle, and such termination of the hiring and/or the Agreement or seizure shall be without prejudice to any right, remedy or claim for damages of the Owners then accrued including the liability of any Guarantor to the Owners."

These provisions are substantially similar to those contained in the Hire Purchase Agreement in the case of *Public Prosecutor v. Patani Motors*[1] and the facts in that case were similar to those in this case except that in that case the hirer was himself the person who had been convicted of the offence under the Dangerous Drugs Ordinance. In this case it was not the hirer who had been convicted but the person to whom the hirer had lent the motor car.

It has not been maintained that Madam Tan Geok Khim used the vehicle herself, and accordingly the question arises as to whether her allowing the convicted person to use the vehicle constituted a breach of the provisions of clause 5 of the Agreement. There was no evidence to show that she had any knowledge of the criminal purpose for which the person used the car. It seems to me that the words "permit to be used the vehicle in contravention of any Statute, Ordinance, Enactment or regulation for the time being in force" must import to the hirer, for a breach of the Agreement to have been committed, some knowledge of the purpose for which the vehicle was to be used which would constitute a contravention of any Statute, etc. There was no evidence that the offence had been committed with the knowledge, consent or connivance of Madam Tan Geok Khim.

This case can therefore be distinguished from *Public Prosecutor v. Patani Motors*[1] because in this case the hirer was not the guilty party. That being so, if the Agreement is a Hire Purchase Agreement, it seems to me that she has not committed a breach of any part of this Agreement, and the respondents cannot therefore invoke the provisions of clause 6 of the Agreement. If on the other hand the Agreement is not a Hire Purchase Agreement but is, as the learned Deputy maintained, merely security for a loan, then it is unenforceable because it does not comply with the provisions of the Bills of Sale Enactment. In either event it is Madam Tan Geok Khim who is entitled to the possession of the vehicle and not the respondents. It is therefore unnecessary for me to decide whether or not the Agreement is a Hire Purchase Agreement.

The learned President was wrong therefore in ordering the return of the motor car to the respondents. The owner for the purposes of sub-section (7) of section 30 of the Ordinance was Madam Tan Geok Khim — and she was an innocent owner. I accordingly quash the order of the learned President and order the return of the motor car to Madam Tan Geok Khim.

Order accordingly.

Solicitors: *Murphy, Dunbar & Chung.*

SUBCHENT KAUR v. CHAI SAU KIAN

[O. C. J. (Smith J.) June 20, 1957]

[Seremban — Originating Summons No. 2 of 1957]

Moneylending — Registered moneylender — Moneylenders Ordinance, 1951, s. 16(1) — Recovery of amount due under charge.

The intention of section 16(1) of the Moneylenders Ordinance, 1951 is that the borrower should be given by the lender for retention written particulars of the loan and its terms so that there may never be at any time dispute concerning the amount of the loan or its terms. Mere temporary physical delivery of a memorandum of charge for the purpose of execution by the borrower does not constitute delivery for the purpose of section 16(1) since there is no intention that the document shall be retained by the borrower.

ORIGINATING SUMMONS.

P. Hall for the applicant.

Edgar Joseph Jr. for the respondent.

Smith J. : — In this case the applicant, a registered moneylender, prays for an order that certain land charged to her by the respondent be sold for the recovery of the amount due under the charge.

I find the following facts which follow the applicant's version. My reasons for so doing will appear later.

The applicant lent $6,000 to the respondent on 31st August, 1954. The sequence of events in the solicitor's office when the transaction was completed was as follows. The applicant signed her name to the charge and duplicate in the space provided while the respondent was absent from that part of the office seeking the attendance of an identifier. When the respondent returned he signed the charge and duplicate and then the identifiers and the solicitor signed. $1,000 in cash and a cheque for $5,000 payable that day were handed to the respondent after he had signed. The two documents were retained by the solicitor's clerk to be sent to the Land Office. The charge, together with the document of title which the respondent had handed over were retained in the Land Office. The duplicate charge was returned to the solicitor and then sent to the applicant. It is common ground that the solicitor on that occasion was acting for the respondent and the applicant and that the duplicate charge was intended for the applicant and not for the respondent.

My acceptance of the applicant's version rather than the respondent's was based principally upon the effect which the witnesses created upon me. The respondent's version was that he was only given a cheque for $5,000. At the solicitor's office in order to get even that amount he had to pretend that he had been paid $1,000 the day before. I was suspicious of this version because the underpayment was not alleged by the respondent at the first opportunity in his affidavit of 18th March. In support of his story the respondent called one of his identifiers as a witness. The latter gave evidence that he remembers the solicitor querying the amount of the cheque and the respondent saying that he had already received the balance but did not say when. At that time the identifier had no particular reason to pay close attention to all that went on. The affidavit of the applicant's attorney dated 27th day of March does not rule out the possibility that the cash passed while the identifiers were signing.

The solicitor cannot remember any details of the transaction but assumes, following his ordinary course of business, that he made sure that the borrower was satisfied and understood what he had done. As I have said the late stage at which this question of the shortage of $1,000 has been raised makes me suspicious of its genuineness.

The problem with which the applicant is faced is that she is a licensed moneylender and must shew that section 16(1) of the Moneylenders Ordinance, 1951 has been complied with.

The applicant argues that since the charge and its duplicate already signed by the applicant were handed to the respondent for signature before any money passed from the applicant to the respondent, a copy of the charge has been "delivered to the borrower". In effect the interpretation which the applicant invites the Court to put upon the word "deliver" is that it imports mere physical transference and, in this context, means merely "pass". Reading the Ordinance as a whole I cannot accept this interpretation. The intention of this section is, in my opinion, that the borrower should be given by the lender for retention written particulars of the loan and its terms so that there may never be at any time dispute concerning the amount of the loan or its terms. Mere temporary physical delivery of a memorandum of charge for the purpose of execution by the borrower does not, I consider, constitute delivery for the purposes of section 16(1) since there is no intention that the document shall be retained by the borrower.

The applicant further argued that the memorandum of charge is also a promissory note within the meaning of section 83 of the Bills of Exchange Ordinance, 1949. It is not necessary for me to decide whether this is so or not. It was submitted that the effect of sub-section (4) of section 16 is that when money has been lent on a promissory note there is no need to give any written particulars of the loan to the borrower. The sub-section reads :—

> "(4) Where a promissory note in the English language or in Romanised Malay given by a borrower to a moneylender in respect of a loan contains in the body of the note or by writing thereon all the terms of the contract and is countersigned by the lender or his agent, such promissory note shall in itself be a sufficient note or memorandum of the contract for the purpose of this section."

The essential parts of sub-section (1) reads :—

> "No contract for the repayment by a borrower . . . shall be enforceable unless a note or memorandum in writing of the contract . . . be signed by the parties . . . and unless a copy thereof . . . be delivered to the borrower . . .".

Reading these two sub-sections together it appears to me that when money has been borrowed on a promissory note which contains all the agreed terms, sub-section (1) of the section is sufficiently complied with if the borrower is furnished with a copy of the promissory note duly authenticated by the lender.

In view of this interpretation it is not necessary for me to decide whether a memorandum of charge is a promissory note. Neither, since I find that the applicant has not complied with section 16(1) of the Moneylenders Ordinance, 1951, is it necessary to rule on the other various arguments advanced by the respondent.

Since no note or memorandum of the moneylender's contract was given to the respondent, the contract for repayment of the money lent and the security given by the borrower to the applicant are by virtue of the said section 16(1) unenforceable and the respondent is entitled to a declaration.

I do, therefore, order that the application for an order that the land be sold at public auction be dismissed and do declare that the contract for repayment by the respondent of the principal and interest purported to be secured by a memorandum of charge (dated 31st day of August, 1952, and made between the respondent of the one part and the applicant of the other part and registered as Negri Sembilan Presentation No. 95101) and the charge over the land described in the said memorandum of charge are unenforceable.

I am now prepared to hear submissions concerning the necessary consequential orders and any argument concerning costs.

Application dismissed.

IP YING WAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) June 24, 1957]

[K. L. — Criminal Appeal No. 24 of 1957]

Penal Code s. 448 — House trespass with intent to annoy — Accused making statement from dock — Whether Magistrate can cross-examine him.

In this case the appellant was charged with an offence under section 448 of the Penal Code in that he committed house trespass by entering into the house of one Lum Kee with intent to annoy him. The evidence suggested that the accused went to the house to annoy Lum Kee's son but there was no evidence to show that accused entered the house to annoy Lum Kee. The charge was not amended but the Magistrate convicted the accused on the original charge. The accused made a statement from the dock and the Magistrate cross-examined him on his statement.

Held: (1) the charge against the accused was not proved and therefore the conviction must be set aside;

(2) when an accused elects to make a statement from the dock he is not subject to cross-examination.

MAGISTRATE'S CRIMINAL APPEAL.

Kam Woo Wah for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Buhagiar J. : — The appellant was charged with an offence punishable under section 448 of the Penal Code in that he committed house trespass by entering into the building of one Lum Kee, used as dwelling-house with intent to annoy the said Lum Kee. The appellant was found guilty, convicted and sentenced to four months' imprisonment. This is an appeal against conviction.

There is no question that for the offence of criminal trespass the prosecution must prove that the entry took place with the intent to intimidate, insult or annoy etc. It must be proved that some criminal intent was present in the mind of the accused at the time of entry and mere knowledge that the entry will annoy the occupant of the premises is not sufficient. It is quite clear in the present case that the evidence for the prosecution does not show that the accused had the intent to annoy Lum Kee; it may be that he entered the building with the intent to annoy Lum Kee's son, P.W.2 and under the circumstances the charge was not proved. It is in my opinion possible for the Magistrate to amend the charge before conviction but he did not do so and I do not consider that it is proper at this stage to rectify the error. Although the appellant may be guilty of some other offence, the charge against him has not been proved.

The appeal is therefore allowed and conviction and sentence set aside.

I should add that when the accused was called upon to make his defence he elected to make a statement from the dock and in this statement he admitted that he fought with P.W.2. The learned Magistrate, however, proceeded to cross-examine the accused. This should not have been done. When the accused elects to make a statement from the dock he is not subject to cross-examination.

Appeal allowed.

Solicitors: *S. M. Yong & Co.*

CHUA KIM HONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) June 24, 1957]

[K. L. — Criminal Appeal No. 26 of 1947]

Emergency (Registration Areas) Regulation, 1948, reg. 20A — Charge of accommodating a person without entering particulars in hotel register.

Hotel — Accommodation — Meaning to "accommodate."

In this case the appellant pleaded guilty to a charge under reg. 20A of the Emergency (Registration Areas) Regulation 1948. The facts were that a police officer went to a hotel of which the appellant was managing partner and of which he was in charge and saw a lady running from a room in the hotel. He stopped her and told her to return to the room. In the room he saw a Chinese male who was hurriedly dressing. The woman was not completely dressed. On investigation it was found that the names of the two persons were not entered in the register of the hotel. On admission of the facts by the appellant, he was convicted and sentenced to a fine of $1,000.

Held: (1) the object and purpose of the Emergency (Registration Areas) Regulation 1948 is to have a check on people within a registered area and regulation 16 was not intended to be a check on people who casually and for a temporary purpose make use of a room in a hotel;

(2) the word "accommodate" in the regulation under which the appellant was charged cannot mean a casual occupation of part of the premises or a room in a boarding house;